

OMB CONTROL NO.

§ 46.47 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0581-0031.

[49 FR 23826, June 8, 1984]

§ 46.48 Procedure for investigating complaints involving commodities of a unique nature or coming from a distinct geographic area.

(a) *Scope:* This section provides for the payment of fees and the investigation of allegations of misrepresentation or misbranding in which the commodity which is misbranded or misrepresented is purported to be a commodity of a unique name or geographical designation which is defined as:

- (1) A perishable agricultural commodity as that term is defined under the Perishable Agricultural Commodities Act, 1930;
- (2) Subject to a federal marketing order under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*);
- (3) Traditionally identified as being produced in a distinct geographic area, State, or region; and
- (4) Of a unique identity, based on such distinct geographic area, which has been promoted with funds collected through producer contributions pursuant to such marketing order.

(b) *Filing complaints:* (1) Any person desiring to complain of a possible violation by any commission merchant, dealer, or broker as a result of misrepresentation or misbranding of any commodity subject to these regulations may file a complaint with the Secretary of Agriculture and request an investigation of the complaint by the Secretary.

(2) Complaints shall be made in writing setting forth all the essential details, including but not limited to:

- (i) The name and address of each complaining person;

- (ii) The name and address of each person against whom the complaint is made;

- (iii) The commodity, approximate quantity of the commodity, and circumstances of alleged misrepresentation or misbranding;

- (iv) The current location of the commodity;

- (v) If shipped, the shipping and destination points of the commodity;

- (vi) A statement of all other known material facts with respect to the complaint; and

- (vii) Copies of any documents or evidence of any kind in the possession of the complainant regarding the alleged violation.

(3) The complaint shall be accompanied by a non-refundable \$250.00 filing fee made payable to the Agricultural Marketing Service (see paragraph (e) of this section Collection of fees).

(4) The complaint, all supporting evidence, and fee should be mailed to: PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456.

(c) *Handling complaints.* (1) Upon receiving a written complaint, supporting evidence, and the \$250.00 preliminary investigation fee from a complaining person, the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture shall order a preliminary investigation to determine if the complaint can be substantiated. If the initial investigation discloses no violation of the Act, no further action shall be taken and the complaining person shall be informed of the finding. The \$250.00 filing fee shall be considered full payment for the preliminary investigation.

(2) If the Director finds reasonable cause for further investigation, the complaining person shall be duly notified of the findings. Prior to any further investigation, the Director shall advise the complaining person of the estimated fees and charges which the complaining person must pay. In calculating the estimated fees, the Director shall use the hourly salary rate of a GS-5, Step 4, for clerical time and GS-13, Step 1, for professional time, plus